THE SENATE TWENTY-SEVENTH LEGISLATURE, 2014 STATE OF HAWAII S.B. NO. ²⁴⁶⁹ S.D. 2

C.D. 1

A BILL FOR AN ACT

RELATING TO TELEHEALTH.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that one of the 1 challenges faced by the country's health care system is 2 providing quality care to segments of the population who do not 3 have access to essential services because of geographic 4 limitations. Using telehealth to deliver health care from a 5 distance is an effective way of overcoming certain barriers to 6 accessing care, particularly for communities located in rural 7 and remote areas. This is especially important in Hawaii, where 8 residents on the neighbor islands and in rural areas do not have 9 the same level of access to care as residents in urban areas of 10 11 Oahu.

12 The legislature further finds that telehealth services are 13 used extensively across the country with no compromise in 14 quality of care when the services are within the scope of 15 practice of a provider. However, reimbursement policies vary 16 between health plans, leading to confusion among health care 17 providers and restrictions on patient access to quality health 18 care.





The legislature additionally finds that requiring parity
 for telehealth services will empower consumer choice, reduce
 disparities in access to care, enhance health care provider
 availability, and improve quality of care.

5 The legislature also finds that various sections of the 6 Hawaii Revised Statutes contain different definitions for or 7 references to "telemedicine" and "telehealth" and notes that 8 these definitions and references should be harmonized for 9 consistency.

10 Accordingly, the purpose of this Act is to:

11 (1) Require equivalent insurance reimbursement for
12 services, including behavioral health services,
13 provided by a health care provider to a patient
14 regardless of whether the service is provided through
15 telehealth or via face-to-face contact between health
16 care provider and patient;

17 (2) Clarify that health care providers for purposes of
18 telehealth include primary care providers, mental
19 health providers, oral health providers, physicians
20 and osteopathic physicians, advanced practice
21 registered nurses, psychologists, and dentists; and



1	(3) Change references to "telemedicine" in the Hawaii
2	Revised Statutes to "telehealth" for consistency.
3	SECTION 2. Section 209E-2, Hawaii Revised Statutes, is
4	amended by amending the definition of "medical and health care
5	services" to read as follows:
6	""Medical and health care services" means medical research,
7	clinical trials, and [telemedicine,] telehealth, but not routine
8	medical treatment or services."
9	SECTION 3. Section 431:10A-116.3, Hawaii Revised Statutes,
10	is amended by amending subsection (c) to read as follows:
11	"(c) Reimbursement for services provided through
12	telehealth shall be equivalent to reimbursement for the same
13	services provided via face-to-face contact between a health care
14	provider and a patient. There shall be no reimbursement for a
15	telehealth consultation between health care providers unless a
16	health care provider-patient relationship exists between the
17	patient and one of the health care providers involved in the
18	telehealth interaction $[-]$ and the patient is accompanied by a
19	treating health care provider at the time telehealth services
20	are provided by the consulting health care provider; provided
21	that when behavioral health services are provided, a second

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1 health care provider shall not be required to accompany the 2 patient. For the purposes of this section, "health care provider" 3 means a provider of services, as defined in 42 U.S.C. 1395x(u), 4 a provider of medical and other health services, as defined in 5 42 U.S.C. 1395x(s), and any other person or organization who 6 7 furnishes, bills, or is paid for health care in the normal course of business [-], including but not limited to primary care 8 providers, mental health providers, oral health providers, 9 physicians and osteopathic physicians licensed under chapter 10 11 453, advanced practice registered nurses licensed under chapter 457, psychologists licensed under chapter 465, and dentists 12 13 licensed under chapter 448." SECTION 4. Section 432:1-601.5, Hawaii Revised Statutes, 14 15 is amended by amending subsection (c) to read as follows: Reimbursement for services provided through 16 "(C) 17 telehealth shall be equivalent to reimbursement for the same 18 services provided via face-to-face contact between a health care 19 provider and a patient. There shall be no reimbursement for a 20 telehealth consultation between health care providers unless a 21 health care provider-patient relationship exists between the 22 patient and one of the health care providers involved in the 2014-2277 SB2469 CD1 SMA.doc

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telehealth interaction [-] and the patient is accompanied by a 1 treating health care provider at the time telehealth services 2 are provided by the consulting health care provider; provided 3 that when behavioral health services are provided, a second 4 health care provider shall not be required to accompany the 5 6 patient. For the purposes of this section, "health care provider" 7 means a provider of services, as defined in 42 U.S.C. 1395x(u), 8 a provider of medical or other health services, as defined in 42 9 U.S.C. 1395x(s), and any other person or organization who 10 furnishes, bills, or is paid for health care in the normal 11 course of business [-], including but not limited to primary care 12 providers, mental health providers, oral health providers, 13 14 physicians and osteopathic physicians licensed under chapter 453, advanced practice registered nurses licensed under chapter 15 457, psychologists licensed under chapter 465, and dentists 16 licensed under chapter 448." 17 SECTION 5. Section 432D-23.5, Hawaii Revised Statutes, is 18 amended by amending subsection (c) to read as follows: 19 "(c) Reimbursement for services provided through 20 telehealth shall be equivalent to reimbursement for the same 21 . 22 services provided via face-to-face contact between a health care 2014-2277 SB2469 CD1 SMA.doc

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1	provider and a patient. There shall be no reimbursement for a
2	telehealth consultation between health care providers unless an
3	existing health care provider-patient relationship exists
4	between the patient and one of the health care providers
5	involved in the telehealth interaction $[-,]$ and the patient is
6	accompanied by a treating health care provider at the time
7	telehealth services are provided by the consulting health care
8	provider; provided that when behavioral health services are
9	provided, a second health care provider shall not be required to
10	accompany the patient.
11	For the purposes of this section, "health care provider"
12	means a provider of services, as defined in 42 U.S.C. $1395x(u)$,
13	a provider of medical or other health services, as defined in 42
14	U.S.C. 1395x(s), and any other person or organization who
15	furnishes, bills, or is paid for health care in the normal
16	course of business [-], including but not limited to primary care
17	providers, mental health providers, oral health providers,
18	physicians and osteopathic physicians licensed under chapter
19	453, advanced practice registered nurses licensed under chapter
20	457, psychologists licensed under chapter 465, and dentists
21	licensed under chapter 448."



SECTION 6. Section 440G-11.5, Hawaii Revised Statutes, is 1 2 amended by amending subsection (a) to read as follows: "[+] (a) [+] In conjunction with broadband services, the 3 director shall: 4 Promote and encourage use of telework alternatives for 5 (1)public and private employees, including appropriate 6 7 policy and legislative initiatives; Advise and assist state agencies, and upon request of (2)8 9 the counties, advise and assist the counties, in planning, developing, and administering programs, 10 projects, plans, policies, and other activities to 11 12 promote telecommuting by employees of state and county agencies; 13 Support the efforts of both public and private 14 (3) entities in Hawaii to enhance or facilitate the 15 deployment of, and access to, competitively priced, 16 advanced electronic communications services, including 17 18 broadband and its products and services and internet 19 access services of general application throughout 20 Hawaii;

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accessible broadband services to unserved and

Make recommendations to establish affordable,

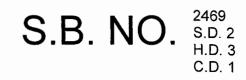


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1		underserved areas of Hawaii and monitor advancements
2		in communications that will facilitate this goal;
3	(5)	Advocate for, and facilitate the development and
4		deployment of, expanded broadband applications,
5		programs, and services, including telework,
6		[telemedicine,] telehealth, and e-learning, that will
7		bolster the usage of and demand for broadband level
8		telecommunications;
9	(6)	Serve as a broadband information and applications
10		clearinghouse for the State and a coordination point
11		for federal American Recovery and Reinvestment Act of
12		2009 broadband-related services and programs; and
13	(7)	Promote, advocate, and facilitate the implementation
14		of the findings and recommendations of the Hawaii
15		broadband task force established by Act 2, First
16		Special Session Laws of Hawaii 2007."
17	SECI	ION 7. Section 453-1.3, Hawaii Revised Statutes, is
18	amended to read as follows:	
19	"§453-1.3 Practice of [telemedicine.] telehealth. (a)	
20	Subject t	o section 453-2(b), nothing in this section shall
21	preclude	any physician acting within the scope of the

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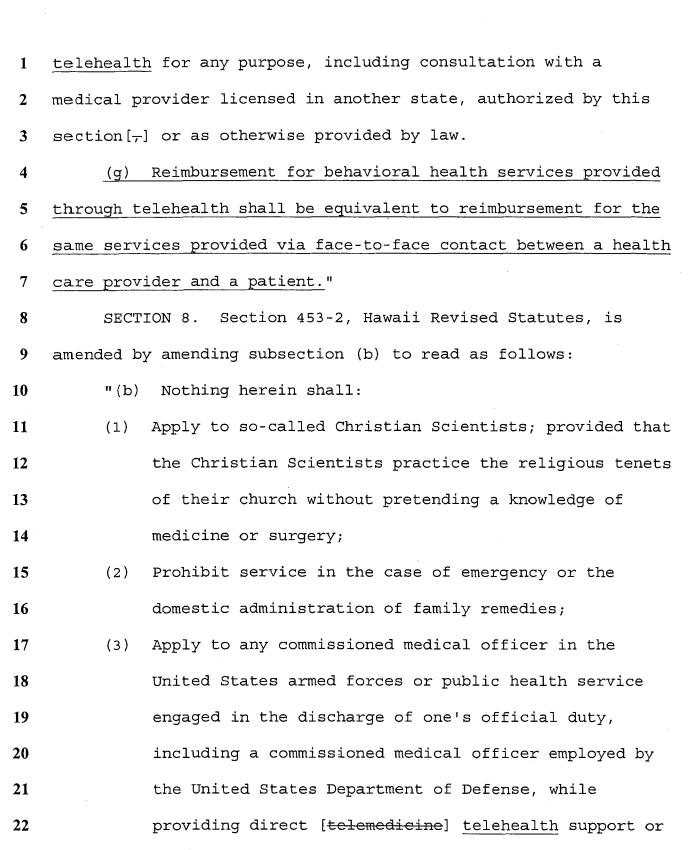


1	physician's license to practice from practicing [telemedicine]
2	telehealth as defined in this section.
3	(b) For the purposes of this section, ["telemedicine"]
4	"telehealth" means the use of telecommunications [services,] as
5	that term is defined in section 269-1, including but not limited
6	to real-time video [or web conferencing] conferencing-based
7	communication $[\Theta_{\mathbf{T}}]_{,}$ secure interactive and non-interactive web-
8	based communication [to establish], and secure asynchronous
9	information exchange, to transmit patient medical information,
10	including diagnostic-quality digital images and laboratory
11	results for medical interpretation and diagnosis, for the
12	purposes of delivering enhanced health care services and
13	information to parties separated by distance, establishing a
14	physician-patient relationship, [to evaluate] evaluating a
15	patient, or [to_treat] <u>treating</u> a patient. ["Telehealth" as
16	used in chapters 431, 432, and 432D, includes "telemedicine" as
17	defined in this section.]
18	(c) [Telemedicine] <u>Telehealth</u> services shall include a
19	documented patient evaluation, including history and a
20	discussion of physical symptoms adequate to establish a
21	diagnosis and to identify underlying conditions or
22	contraindications to the treatment recommended or provided.
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Treatment recommendations made via [telemedicine,] 1 (d) 2 telehealth, including issuing a prescription via electronic means, shall be held to the same standards of appropriate. 3 practice as those in traditional physician-patient settings that 4 do not include a face-to-face visit but in which prescribing is 5 appropriate, including on-call telephone encounters and 6 encounters for which a follow-up visit is arranged. Issuing a 7 prescription based solely on an online questionnaire is not 8 9 treatment for the purposes of this section and does not constitute an acceptable standard of care. For the purposes of 10 prescribing a controlled substance, a physician-patient 11 relationship shall be established pursuant to chapter 329. 12 (e) All medical reports resulting from [telemedicine] 13 telehealth services are part of a patient's health record and 14 shall be made available to the patient. Patient medical records 15 16 shall be maintained in compliance with all applicable state and federal requirements including privacy requirements. 17 A physician shall not use [telemedicine] telehealth to 18 (f) 19 establish a physician-patient relationship with a patient in this State without a license to practice medicine in Hawaii. 20 Once a provider-patient relationship is established, a patient 21 or physician licensed in this State may use [telemedicine] 22 2014-2277 SB2469 CD1 SMA.doc

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services to neighbor island beneficiaries within a Hawaii National Guard armory on the island of Kauai, Hawaii, Molokai, or Maui; provided that the commissioned medical officer employed by the United States Department of Defense is credentialed by Tripler Army Medical Center;

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Apply to any practitioner of medicine and surgery from (4)7 another state when in actual consultation, including 8 in-person, mail, electronic, telephonic, fiber-optic, 9 or other [telemedicine] telehealth consultation with a 10 licensed physician or osteopathic physician of this 11 State, if the physician or osteopathic physician from 12 another state at the time of consultation is licensed 13 to practice in the state in which the physician or 14 osteopathic physician resides; provided that: 15

16 (A) The physician or osteopathic physician from
17 another state shall not open an office, or
18 appoint a place to meet patients in this State,
19 or receive calls within the limits of the State
20 for the provision of care for a patient who is
21 located in this State;

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1		(B) The licensed physician or osteopathic physician
2		of this State retains control and remains
3		responsible for the provision of care for the
4		patient who is located in this State; and
5		(C) The laws and rules relating to contagious
6		diseases are not violated;
7	(5)	Prohibit services rendered by any person certified
8		under part II of this chapter to provide emergency
9		medical services, or any physician assistant, when the
10		services are rendered under the direction and control
11		of a physician or osteopathic physician licensed in
12		this State except for final refraction resulting in a
13		prescription for spectacles, contact lenses, or visual
14		training as performed by an oculist or optometrist
15		duly licensed by the State. The direction and control
16		shall not be construed in every case to require the
17		personal presence of the supervising and controlling
18		physician or osteopathic physician. Any physician or
19		osteopathic physician who employs or directs a person
20		certified under part II of this chapter to provide
21		emergency medical services, or a physician assistant,
22		shall retain full professional and personal

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1		responsibility for any act that constitutes the
2		practice of medicine when performed by the certified
3		person or physician assistant;
4	(6)	Prohibit automated external defibrillation by:
5		(A) Any first responder personnel certified by the
6		department of health to provide automated
7		external defibrillation when it is rendered under
8		the medical oversight of a physician or
9		osteopathic physician licensed in this State; or
10		(B) Any person acting in accordance with section
11		663-1.5(e); or
12	(7)	Prohibit a radiologist duly licensed to practice
13		medicine and provide radiology services in another
14		state from using [telemedicine] <u>telehealth</u> while
15		located in this State to provide radiology services to
16		a patient who is located in the state in which the
17		radiologist is licensed. For the purposes of this
18		paragraph:
19		"Radiologist" means a doctor of medicine or a

19 "Radiologist" means a doctor of medicine or a
20 doctor of osteopathy certified in radiology by the
21 American Board of Radiology or the American Board of
22 Osteopathy.



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1	["Telemedicine"] <u>"Telehealth"</u> means the use of
2	telecommunications [services], as that term is defined
3	in section 269-1, including but not limited to real-
4	time video conferencing-based communication, secure
5	interactive and non-interactive web-based
6	communication, and secure asynchronous information
7	exchange, to transmit patient medical information,
8	[such as] including diagnostic-quality digital images
9	and laboratory results for medical interpretation and
10	diagnosis, [and deliver] for the purpose of delivering
11	enhanced health care services and information to
12	parties separated by distance. Standard telephone
13	contacts, facsimile transmissions, or email texts, in
14	combination or by themselves, do not constitute a
15	telehealth service for the purposes of this
16	paragraph."
17	SECTION 9. Section 455-1.5, Hawaii Revised Statutes, is
18	amended to read as follows:
19	"[{] § 455-1.5[]] Exceptions; scope of chapter. Nothing in
20	this chapter shall be construed to prohibit or restrict:

21

22 licensed, certified, or registered under the laws of

The practice of a profession by individuals who are



(1)

this State who are performing services within their 1 authorized scope of practice; 2 The practice of naturopathic medicine by an individual 3 (2)employed by the government of the United States while 4 the individual is engaged in the performance of duties 5 required of the individual by the laws and regulations 6 of the United States; 7 The practice of naturopathic medicine by students (3) 8 9 enrolled in a school that meets the requirements of section 455-3. The performance of naturopathic 10 medicine by students shall be pursuant to a course of 11 instruction or assignments from an instructor and 12 under the supervision of an instructor who is a 13 naturopathic physician licensed pursuant to this 14 chapter; and 15 The practice by a doctor of naturopathic medicine duly 16 (4) 17 registered or licensed in another state, territory, or the District of Columbia who is called into this State 18 for consultation with a licensed naturopathic 19 20 physician, including in-person, mail, electronic, telephonic, fiber-optic, or other [telemedicine] 21 telehealth consultation; provided that: 22

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1	(A)	The naturopathic physician from another state
2		shall not open an office, appoint a place to meet
3		patients, or receive calls within this State for
4		the provision of care for a patient who is
5		located in this State; and
6	(B)	The licensed naturopathic physician of this State
7		retains control and remains responsible for the
8		provision of care for the patient who is located
9		in this State."
10	SECTION 1	0. Section 457-2.7, Hawaii Revised Statutes, is
11	amended by ame	nding subsection (a) to read as follows:
12	"(a) Pra	ctice as an advanced practice registered nurse
13	means the scop	e of nursing in a category approved by the board,
14	regardless of	compensation or personal profit, and includes the
15	registered nur	se scope of practice. The scope of an advanced
16	practice regis	tered nurse includes but is not limited to
17	advanced asses	sment; telehealth; and the diagnosis,
18	prescription,	selection, and administration of therapeutic
19	measures inclu	ding over the counter drugs, legend drugs, and
20	controlled sub	stances within the advanced practice registered
21	nurse's role a	nd specialty-appropriate education and
22	certification.	f



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1	SECTION 11. Section 466J-6, Hawaii Revised Statutes, is		
2	amended b	y amending subsection (a) to read as follows:	
3	"(a)	Any provision in this chapter to the contrary	
4	notwithst	anding, a license shall not be required for:	
5	(1)	A licensed medical practitioner in radiology;	
6	(2)	A licensed practitioner of nuclear medicine;	
7	(3)	A licensed physician assistant;	
8	(4)	A licensed doctor of dentistry;	
9	(5)	A licensed dental technician;	
10	(6)	A licensed dental hygienist;	
11	(7)	A student in an approved school for radiographers,	
12		radiation therapists, or nuclear medicine	
13		technologists, or in a school of medicine, podiatry,	
14		dentistry, or a chiropractic school; provided that the	
15		student is operating x-ray machines under the direct	
16		supervision of a licensed radiographer, licensed	
17		radiation therapist, licensed nuclear medicine	
18		technologist, or a qualified person pursuant to this	
19		chapter; and	
20	(8)	A radiologist duly licensed to practice medicine and	
21		radiology services in another state who uses	

[telemedicine] telehealth while located in this State

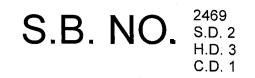
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1 to provide radiology services to a patient who is 2 located in the state in which the radiologist is 3 licensed. For the purposes of this paragraph: "Radiologist" means a doctor of medicine or a 4 5 doctor of osteopathy certified in radiology by the 6 American Board of Radiology or the American Board of 7 Osteopathy. ["Telemedicine"] "Telehealth" means the use of 8 9 telecommunications [services], as that term is defined in section 269-1, including but not limited to real-10 time video conferencing-based communication, secure 11 12 interactive and non-interactive web-based 13 communication, and secure asynchronous information exchange, to transmit patient medical information, 14 [such as] including diagnostic-quality digital images 15 and laboratory results for medical interpretation and 16 diagnosis, [and deliver] for the purpose of delivering 17 18 enhanced health care services and information to parties separated by distance. Standard telephone 19 20 contacts, facsimile transmissions, or email texts, in combination or by themselves, do not constitute a 21

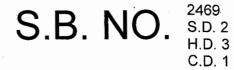
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1	telehealth service for the purposes of this
2	paragraph."
3	SECTION 12. Statutory material to be repealed is bracketed
4	and stricken. New statutory material is underscored.
5	SECTION 13. This Act shall take effect upon its approval.





Report Title:

Telehealth; Insurance; Health Care Providers; Reimbursement

Description:

Requires equivalent reimbursement for services, including behavioral health services, provided through telehealth as for the same services provided via face-to-face contact between a health care provider and a patient. Clarifies that health care providers for purposes of telehealth include primary care providers, mental health providers, oral health providers, physicians and osteopathic physicians, advanced practice registered nurses, psychologists, and dentists. Changes statutory references to "telemedicine" to "telehealth" for consistency. (CD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

